
INTERIOR BOARD OF INDIAN APPEALS

Wolf Point Community Organization v. Acting Rocky Mountain Regional Director, Bureau of Indian Affairs

40 IBIA 131 (10/18/2004)

# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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| WOLF POINT COMMUNITY ORGANIZATION, Appellant, | : | Order Vacating and Remanding Decision |
| v. | : | |
| | : | Docket No. IBIA 02-145-A |
| ACTING ROCKY MOUNTAIN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee. | : | October 18, 2004 |

Appellant Wolf Point Community Organization (WPCO) seeks review of a June 21, 2002, decision of the Acting Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), denying Appellant's request for cancellation of U.S. Direct Loan #1420-0256-7363, also referred to as C56-7363. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision and remands this matter to the Regional Director for further consideration.

## Background

WPCO is a local tribal community organization created under the laws of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, located in northeastern Montana. It is the parent organization of the SilverWolf Casino and Looking Eagle Manufacturing Company, which occupy a 20,000 square foot building, profits from which were to help WPCO pay its loans. One of WPCO's purposes is to promote economic development on the Fort Peck Indian Reservation for the members of the Tribes. The organization is eligible to administer funds and request and receive loans under the Indian Financing Act of 1974. See 25 U.S.C. §§ 1451-1469 (2000); 25 C.F.R. Part 101.

A major Congressional goal behind the enactment of the Indian Financing Act was furthering Indian economic development by assisting in making capital available on reservations on a reimbursable basis. 25 U.S.C. § 1451. Loans under the Indian Financing Act may be made for any purpose which will promote the economic development of an Indian organization and its members. 25 U.S.C. § 1462. According to section 1465 of Title 25,

> The Secretary may cancel, adjust, compromise, or reduce the amount of any loan or any portion thereof heretofore or hereafter made from the revolving loan fund established by this subchapter and its predecessor constituent funds which he determines to be uncollectable in whole or in part, or which is collectable only at an unreasonable cost, or when such action would, in his judgment, be in the best interests of the United States.

The regulations implementing the direct loan aspect of the Indian Financing Act Program, are located in 25 C.F.R. Part 101. Section 101.2(b) of 25 C.F.R. provides that "[d]irect loans may be made by the United States" to, among others, "eligible * * * tribal organizations." Requirements for approval, modification, and repayment of loans are codified in the regulations. 25 C.F.R. §§ 101.5, 101.6, 101.21. The Secretary's authority regarding uncollectable loans is found in 25 C.F.R. §101.17: "If the Secretary determines that a United States direct loan is uncollectable in whole or in part or is collectable only at an unreasonable cost, or when such action would be in the best interest of the United States, the Secretary may cancel, adjust, compromise, or reduce the amount of any loan made from the revolving loan fund." Id.

In 1985, WPCO submitted an application to BIA for a loan through the U.S. Direct Loan Program. In 1987, WPCO received a loan from BIA totaling $1,075,033.80. A 20,000 square foot building, as well as an $860,481.68 annuity investment of funds derived from a tribal land claim award, were used as security or collateral for the government loan. The building securing the loan housed two enterprises of WPCO, SilverWolf Casino and Looking Eagle Manufacturing Company. According to WPCO's brief, the borrowed funds were to be used for debt refinancing, building renovation, and initial working capital. (Appellant's Opening Br. at 7.) Loan repayments were to be made from interest derived from WPCO's investments.

In 1990, WPCO requested and received a loan modification, in which the initial loan amount was increased and the loan period was extended. WPCO alleges that in 1997, it became aware that it had been provided with bad investment advice. According to WPCO, this discovery led WPCO to file suit against its adviser and its accounting firm. That year, WPCO informally requested that BIA cancel its loan.

In 1999, WPCO had difficulty meeting its loan payments and requested and received partial debt forgiveness from BIA. The loan was re-amortized. BIA conducted an appraisal of the security for the loan in 1999. The appraisal valued the building securing the loan at $325,000 and investment funds securing the loan at $480,000. In 2000, the Deputy Commissioner of Indian Affairs approved the modification of the debt. In March 2000, by Resolution # 3-3-2002, WPCO decided to formally request total debt forgiveness or complete

cancellation of its loan under the U.S. Direct Loan program. In support of its request, WPCO cited the loss of investment funds, the inability of its business entities to contribute to loan payments, and the need for assistance to preserve its only financial resources. (Appellant's Opening Br. at 11.) In 2002, WPCO formally requested that BIA totally cancel its debt.

On June 21, 2002, the Regional Director denied WPCO's request. After noting that WPCO is indebted to the United States in the amount of $788,402.13, and listing the terms of the loan, including monthly payments, loan maturity, interest accrual, and security for the loan, the Regional Director set forth the regulatory criteria that applied to the Secretary's authority to cancel the loan. The Regional Director noted that the Secretary may cancel a loan if the Secretary determines that the loan is uncollectible in whole or in part or is collectible only at unreasonable cost, or when such action would be in the best interest of the United States. 1/ He also noted that before action is taken to charge off a loan as uncollectible, every effort must be made to liquidate the security given for the loan and apply the net proceeds as repayment on the balance of principal and interest owed. Without further discussion, the Regional Director summarily concluded, that "[c]ancellation of the loan would not be in the best interest of the United States." (Letter from Benjamin to Gourneau of June 21, 2002, at 2.) The Regional Director then denied WPCO's request to cancel the loan.

## Discussion

On appeal, WPCO argues that the Regional Director's decision should be reversed because it does not explain how the Regional Director determined that cancellation of the loan was not in the "best interest of the United States." (Opening Br. at 24.) WPCO also contends that it has demonstrated that the remaining debt should be cancelled. The Regional Director did not file a brief in this appeal, and therefore did not respond to WPCO's contentions. The Board agrees with WPCO that the Regional Director failed to explain the reasoning for his decision, and therefore the decision should be vacated and remanded for further consideration and an adequate explanation supporting a decision on remand.

As the Board set forth in Reed v. Minneapolis Area Director, 19 IBIA 249, 252 (1991), decisions concerning whether or not to grant a particular request for funding under one of BIA's Indian Financing Act programs are committed to BIA's discretion. Similarly, the decision whether to cancel a loan is committed to BIA's discretion. See 25 U.S.C. § 1465. The Board does not substitute its judgment for that of BIA. The Board does require, however, that the BIA decisionmaker explain the reason(s) for his or her decision, even in the case of a

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1/ Although the Regional Director did not refer to the applicable regulation, the criteria he listed, under which the Secretary is authorized to cancel a Direct Loan, are codified in 25 C.F.R. § 101.17.

discretionary decision. ZCA Gas Gathering, Inc. v. Acting Muskogee Area Director, 23 IBIA 228, 239 (1993).

Furthermore, the administrative record and the decision, read together, must be sufficient to show how BIA reached its conclusion. See S & H Concrete Construction, Inc. v. Acting Phoenix Area Director, 19 IBIA 69, 70-71 (1990) (loan approval); Aubertin Logging & Lumber Enterprises v. Acting Portland Area Director, 18 IBIA 307, 308 (1990) (loan guaranty request). The Regional Director is reminded, however, that it is his responsibility to explain the basis of his decision and to ensure that the administrative record supports that decision. See Bonanza Fuel, Inc. v. Director, 33 IBIA 203, 205 n.5 (1999).

Indeed, a BIA decision denying a request to cancel a loan must provide some explanation of the reason(s) for the denial. Although BIA has broad discretion to deny such a request, BIA must nevertheless explain how it reached its decision. A summary declaration that cancellation "is not in the best interest of the United States" is simply insufficient.

The Regional Director's decision in this case is devoid of any explanation of how he concluded that cancellation would not be in the best interest of the United States. Although he recited certain facts about WPCO's financial situation, he did not provide any connection between any particular facts and his conclusion or provide any analysis for the choice he made.

The Board renders no judgment as to whether the administrative record before the Regional Director was adequate to support the Regional Director's decision to decline WPCO's request. The Board decides only that the lack of explanation for the decision means that the decision must be vacated and remanded.

## Conclusion

Therefore, pursuant to the authority delegated to the Board by the Secretary of the Interior, 43 C.F.R. § 4.1, the Acting Rocky Mountain Regional Director's decision of June 21, 2002, is vacated, and this matter is remanded for further consideration in accordance with this opinion.

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| Colette J. Winston | Steven K. Linscheid |
| Administrative Judge | Chief Administrative Judge |